

It's good that the F.C.C. is apparently moving to block the AT&T T Mobil merger but don't underestimate AT&T. According to an article published to Public Knowledge's website Don't Count out AT&T it is important the FCC not under-estimate the company.

With any other company, in any other merger, the action the Federal Communications Commission (FCC) announced on Tuesday would be the signal that a deal is dead. But when one of the parties involved is AT&T, the rules don't apply.

To recap, on Nov. 22, the FCC announced that Chairman Julius Genachowski was going to ask the other commissioners to designate AT&T's takeover of T-Mobile for an administrative hearing. Sounds boring, no? Just some bureaucratic mumbo-jumbo, right? Yes, it is boring sounding. Yes, it is some bureaucratic mumbo-jumbo. And that's the point.

At this stage of AT&T's attempted \$39 billion takeover of T-Mobile, the U.S. Justice Department has filed suit to stop the deal on antitrust grounds that the takeover would harm competition. The pre-trial wrangling has started and the actual trial is set to start in February. Now the FCC comes along and at some point is expected to approve an order that will require the equivalent of a trial within the agency at which AT&T will have to prove, with evidence, all of the ridiculous claims it has been making about the takeover creating 96,000 jobs.

On the face of it, that will be a tall order. As the New York Times diplomatically put it, AT&T "has been carefully circumspect" about saying exactly what the direct result on company employment would be. It has been even more circumspect about trying to justify the supposed massive job gains that would come about as a result of the merger.

The smoke-and-mirrors goes like this: High-speed Internet access (broadband) in an area, particularly in rural areas, leads to job creation. AT&T deploys high-speed Internet access in rural areas. Therefore, AT&T deployment will create jobs.

The company has spent millions of dollars on TV commercials and millions more for lobbyists to hammer that point home. Except that logic doesn't compute, for any number of reasons, and the FCC staff saw right through it, at one point even telling AT&T in October -- eight months after the takeover was announced -- was still incomplete. AT&T's public replies were totally obscured by the [Highly Confidential] dodge it used to avoid making information broadly available.

Even so, public interest groups, including Public Knowledge, have argued for months that AT&T's claims don't hold up. AT&T has shed 10,000 jobs a year for the past 10 years. Even if it takes over T-Mobile, their networks are largely in the same places. T-Mobile is not available in many rural areas, so the claims of great new rural growth are suspect. If AT&T wanted to build out in rural areas, it

could do so right now, using some of that \$39 billion. An AT&T memo mistakenly filed with the FCC said it would have cost the company 1/10th of the cost of the deal to build out its network.

When the FCC order setting the transaction order is approved, perhaps in December, AT&T will have the chance to lay out all of its arguments over many, many weeks. Opponents will do the same. Over many, many weeks. And even after the agency judge renders a decision, then the full FCC will take it up over many more weeks. And after the agency makes a decision, then AT&T can take the matter to Federal court. Are you starting to get the picture?

For any other company, the decision to start the process of sending the matter into the depths of the agency's administrative process would be a great big hint to DROP IT. AT&T took the hint late Nov. 23, saying it was dropping the FCC case while taking a \$4 billion charge against earnings and continue to pursue the DOJ case in court.

AT&T isn't any other company. It has unlimited resources to continue the case for as long as it wants, which will have the affect of freezing T-Mobile's deployment and marketing. That was the point of the takeover to begin with. AT&T wanted to eliminate a competitor. Now they are almost doing the same thing.

In the face of the FCC announcement, AT&T kept hammering away at the fact that the government was killing a job-creating deal, using analogies that just didn't make any sense. Think of the Black Knight of Monty Python fame.

Sure, AT&T may be on the hook for a breakup fee. But the \$3 billion cash part of the arrangement if the deal falls apart is 1/10th of one quarter's revenues. And the \$3 billion spectrum and roaming access AT&T is supposed to throw in as part of the arrangement is bookkeeping.

It's not in the company's DNA to give up quickly. The old Bell companies created from the 1984 breakup of AT&T pledged to eliminate the restrictions put in place when the really old Bell System was split up. It took them until 1996 to do it, but it got done. So don't be surprised if the T-Mobile saga drags on.

Meanwhile, AT&T can claim a victory of sorts. Even while fighting the Justice Department and the FCC, it will get something it really wants -- some high-value spectrum for its wireless services. As the consolation prize, the FCC said it would approve, with some as-year-unknown conditions, AT&T's \$1.9 billion purchase of spectrum from Qualcomm. That's prime territory because it will allow for national deployment quickly

The bottom line: AT&T can continue to hamstring a competitor and will get more spectrum to gain

advantage over the rest of the market, even if it has to spend a few million more to keep the takeover going long past its expiration date. AT&T knows when to hold 'em and knows when to fold 'em. But not before it is ready to do so and not until after it has achieved its objectives.